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**Minutes**  
**Nexus Committee Meeting (Open Session)**  
**April 24, 2018**  
**Radisson Blu Hotel, Mall of America, Bloomington, MN**

List attendees:

Rick Addison	LA*
Steven Alvarez	GA
Dan Armer	NM*
Tripp Baltz	Bloomberg BNA
Michelle Biermeier	WI
Karolyn Bishop	WA
Tracy Bjerke	MN
Krystal Bolton	LA*
Joan Cagle	TN*
Lennie Collins	NC
Wendy Conlin	MN
Holly Coon	AL
Richard Cram	MTC
Norma Dearixon	MO
Cassie Diemert	MN
Richard Dobson	KY*
Nikki Elwood	NE*
Michael Emfinger	AL
Cathy Felix	MTC
John Frasier	NH
Carl Frieden	COST
Keith Getschel	MTC
Ellen Golden	WV*
Preeti Gratz	AL
Layne Hadlock	ID
Frank Hales	UT
Brian Hamer	MTC
Karin Harris	MN

Virgil Helton	Fast Enterprises, LLC
Nathan Hoepfner	KS
Troy Hopkins	NE*
Joe Huddleston	EY LLP
Harold Jennings	MTC
Rusty Johnson	TX*
Harold Jones	TN
Bryan Kelly	WA
Samwel Khakame	CO*
Jayne Kulberg	WI
Cindy LaBarge	MN
Violeta Leroy	NH
Janette Lohman	Thompson Coburn LLP
Katie Lolley	OR
James Maisto	CT*
Deanna Munds-Smith	AR
Shannon Nelson	MN
Justin Nieman	MN
Marcia Oakman	KY*
Olufemi Obikoya	DC
Scott Peterson	Avalara
Matt Peyerl	ND
Ryan Prete	Bloomberg BNA
Ken Roberts	ID
Tim Sanders	AL
Robert Schauer	MTC
Tom Shaner	ID
Larry Shinder	MTC
Diane Simon-Queen	MTC*
Jeff Silver	MTC
Scott Spilinek	NE*
Tiffany Southworth	UT*
Jenny Starr	MN
Marshall Stranburg	MTC
Randy Tilley	ID
Audrey Tyndall-Hoyle	NJ*
John Valentine	UT
Christy Vandevender	AL
Ashley Wilman	MN

Brian Wittner MN\*  
Steve Yang MTC

\*participation by telephone

Chair Christy Vandevender, AL, brought the meeting to order at 1:30 pm CDT, introductions of attendees were made, and public comment was invited. No public comment was made.

Randy Tilley, ID, Vice-Chair, moved for approval of the minutes of the November 15, 2017 open session meeting of the Nexus Committee, and the motion passed unanimously. Randy Tilley also moved for approval of the minutes of the January 4, 2018 open session meeting of the Nexus Committee conducted by teleconference, and the motion passed unanimously.

Nexus Director's Report on status of online marketplace seller voluntary disclosure initiative

Richard Cram, Director of the National Nexus Program, presented the Update on Recent Nexus Law Developments since November 15, 2017 and the FY 2018-to-date Nexus Program Director's Report, including an update on the status of the online marketplace voluntary disclosure initiative, which is nearing conclusion. Based on the back tax liability estimates provided in the applications of taxpayers executing agreements and registering with the states under the initiative, it should result in an estimated \$51,058,614 in annual potential future revenue for the participating states. Approximately 45.7% of the applications submitted ended up as taxpayer-signed agreements.

New Business—proposal for new voluntary disclosure initiative

Janette Lohman, tax practitioner with Thompson Coburn LLP in St. Louis, gave a presentation recommending that the Nexus Committee immediately offer either a permanent or at least six-month prospective compliance voluntary disclosure program (waiving back sales/use tax liabilities in return for registration and compliance going forward) to taxpayers with questionable nexus in the states (such as click-thru nexus, or other attributional nexus theories). A taxpayer that clearly had nexus, having either temporary or permanent employees or sales representatives in the state, owning or leasing real property or tangible personal property in the state, would not be eligible. She based the proposal on her experience as former Director of Revenue from Missouri, where her agency had such a program during the 1990's that was very successful, a win-win for the state and the taxpayer: bringing in previously uncollected revenue to the state without jeopardizing the continued existence of the taxpayer's

business. Ms. Lohman emphasized that the current lookback period requirement discouraged businesses that otherwise would come forward, from doing so. She has a client interested in coming forward, but the client fears the lookback period liability exposure.

Christy Vandevender asked whether Missouri had legislation authorizing the program. Ms. Lohman stated that the program operated under the agency's settlement authority. Brian Hamer asked whether it would be better to wait until after the *Wayfair* decision. Ms. Lohman responded that the *Wayfair* decision should be irrelevant to resolving questionable nexus situations.

Joe Huddleston, tax practitioner with EY LLP, made a statement following Ms. Lohman's presentation, voicing his support for the proposal. He noted the success of the MTC online marketplace seller voluntary disclosure initiative and encouraged the Committee to consider a conducting new initiative.

Richard Cram reviewed a list of issues that would need to be considered if such a proposal were to move forward: (1) time period to receive applications; (2) should there be a minimum number of states participating; (3) should participating states have the option to require lookback periods; (4) should there be a minimum sales volume requirement; (5) the eligibility criteria; and (6) when should registration take place.

Jenny Starr, MN, stated that MN was focusing its resources on education efforts for taxpayers following the *Wayfair* decision and would not be willing to participate in a prospective compliance voluntary disclosure initiative.

Randy Tilley stated that ID had recently enacted click-thru nexus legislation, would be supportive of a prospective compliance initiative, and may initiate one on its own as part of implementing its new law. Richard Dobson, KY, Christy Vandevender, AL, Lennie Collins, NC, and Frank Hales, UT, stated that those states would also be supportive of prospective compliance initiative. However, no motion was made to advance the proposal.

New Business—proposed changes to standard agreement

Richard Cram reviewed his memorandum recommending the following changes to the standard voluntary disclosure agreement used by states participating in the MTC Multistate Voluntary Disclosure Program:

- revise Paragraph 1 to clarify that “Signature State” means the tax administration agency of the state (suggested by ID);
- revise Paragraphs 5.1 and 5.3 to either require taxpayers to send registration forms, back tax payments , and returns or spreadsheets directly to the states, or give taxpayers the option to send those items directly to the state or to MTC staff;
- revise Paragraph 5.1.4 to provide that if the state requires electronic filing of back tax returns and electronic payment of back taxes, the taxpayer will comply with that requirement;
- either delete Paragraph 7.1 or revise it to provide that the Commission will retain an electronic copy of the Agreement, pursuant to its record retention policy, and provide a copy to the state or taxpayer upon request; and
- revise Paragraph 10.3 to provide that imaged signatures transmitted electronically will be considered valid. Richard stated that having taxpayers send documents and payments directly to the states should speed up processing and reduce the opportunity for items to become lost or misplaced. Also, when taxpayers send the documents and payments directly to the state, MTC staff will need to obtain from the states the amounts received for tracking purposes. Regarding retention of copies of the agreement, Richard stated that currently, MTC staff no longer has space to retain hard copies of the agreements, so those are being imaged and retained electronically. Also, when the taxpayer sends the signed agreement directly to the state, MTC staff will not have a signed agreement to retain.

Matt Peyerl, ND, asked whether taxpayers were that time-sensitive regarding processing of voluntary disclosure agreements. Richard Cram stated that many taxpayers were anxious to get registered as quickly as possible and expressed to him concerns about how long the process took to complete.

Steven Alvarez, GA, expressed concern about tracking documents if taxpayers were required to send them directly to the state, instead of MTC staff. Richard responded that MTC staff would need to follow up with state voluntary disclosure staff regarding documents and payments that states received directly from taxpayers.

Audrey Hoyle, NJ, expressed concern about receiving documents in piecemeal fashion. Richard responded that taxpayers would be instructed to send all documents and payments to state in one packet.

Katie Lolley, OR, suggested deleting the word “scanned” from the suggested change to Paragraph 10.3.

Randy Tilley recommended that from a customer service perspective, taxpayers should be given the option to send items directly to the state or to MTC staff.

Jayne Kulberg, WI, wanted to make sure that if language is added to the agreement requiring taxpayers to comply with electronic filing and payment requirements of the state, this would take precedence over any option given to the taxpayer elsewhere in the agreement to send documents or payments directly to the state or to MTC staff. Richard Cram responded that such language can be added to the proposed revisions.

Randy Tilley moved that the suggested changes be adopted, with the revisions to 5.1 and 5.3 to reflect that taxpayers will have the option to send documents directly to the state or to the MTC staff, subject to any electronic filing requirements of the state; revisions to 7.1 providing that the Commission will retain an electronic copy of the Agreement, pursuant to its record retention policy, and will provide a copy to the state or taxpayer upon request; and deleting the word “scanned” from the suggested revisions to 10.3. The motion was approved unanimously by voice vote. A copy of the revisions to the standard agreement, as approved by the Committee, is attached.

#### Closed Session

The committee entered closed session to discuss matters protected from disclosure.

#### Open Session

The Committee returned to open session, had nothing to report, and adjourned.